

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Developing a Unified Intercarrier)
Compensation Regime)
)
_____)

CC Docket No. 01-92

**COMMENTS OF METROPCS COMMUNICATIONS, INC.
ON THE *FURTHER NOTICE OF PROPOSED RULEMAKING***

**Carl W. Northrop
Paul, Hastings, Janofsky
& Walker LLP
875 15th Street, NW
Washington, DC 20005
(202) 551-1700**

**Mark A. Stachiw
V.P., General Counsel and
Secretary
MetroPCS Communications, Inc
8144 Walnut Hill Lane, Suite 800
Dallas, TX 75231
(214) 265-2550**

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Its Attorneys

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Summary

MetroPCS Communications, Inc. (“MetroPCS”), a provider of innovative wireless communications services, is commenting on the *Further Notice of Proposed Rulemaking* (“*FNPRM*”) in CC Docket No. 01-92 pertaining to the development of a unified intercarrier compensation regime. MetroPCS strongly endorses the Commission’s conclusion that the current outmoded compensation regime cannot and should not be sustained in today’s dynamic telecommunications market. Reform is urgently needed to substitute a unified scheme that eliminates arbitrage opportunities and places competitors on a level playing field.

The best approach to reform is to use the Intercarrier Compensation Forum (“ICF”) plan (the “ICF Plan”) as the starting point. This is the only offered plan which is sufficiently comprehensive to address the many difficult issues that must be resolved for reform to be meaningful. The ICF Plan is being advanced by a diverse group of carriers and strikes a reasonable balance on many divisive issues which makes it worthy of serious consideration. However, certain adjustments to the plan are appropriate to assure fairness.

Specifically, MetroPCS notes that wireless interests are under-represented in the ICF group. As a consequence, changes are needed to the ICF Plan to achieve an optimal result. For example, there is no reason for the transition to bill-and-keep for wireless-wireline interconnection to take six years. The historic concern about bill-and-keep in the wireless context - i.e., uneven traffic flows - has been largely eliminated by changes in customer usage patterns which have resulted in incoming and outgoing calling patterns for wireless users becoming virtually indistinguishable from those of wireline customers.

In reforming the intercarrier compensation regime, the Commission should adopt detailed default interconnection rules that largely codify the “single POI per LATA” rule and the intraMTA local calling rule that have been in place for so long for wireless carriers. Abandoning these rules at this time would have serious adverse effects on network architecture, existing interconnection agreements and the competitive marketplace. Additionally, the Commission should mandate that all indirect interconnection arrangements involving a wireless carrier be governed by a default bill-and-keep scheme absent agreement otherwise.

One critical aspect of the new intercarrier compensation regime must be a Commission ruling that connecting carriers are obligated to provide transit service upon request at reasonable (cost-based) rates. The entire revised intercarrier compensation scheme could grind to a halt if originating carriers are denied a fair and efficient method of delivering traffic to terminating carriers in a bill-and-keep regime. The Commission has the legal authority to obligate connecting carriers to provide transit service, and should do so.

The best way for the Commission to achieve its laudable objectives in this proceeding will be to issue promptly a *First Report and Order* indicating that the ICF Plan will form the basis of the intercarrier compensation reform, and to ask interested parties to devote their undivided attention to the many important details in this plan so that it can be adjusted and fine-tuned as necessary to serve the public interest.

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MetroPCS Communications, Inc. (“MetroPCS”),¹ by its undersigned counsel, respectfully submits its comments on the *Further Notice of Proposed Rulemaking* (“*FNPRM*”)² issued in the above-captioned proceeding. The following is respectfully shown:

I. The Interest of MetroPCS

MetroPCS is a facilities-based telecommunications service provider which currently provides wireless services to approximately 1.5 million customers in the San Francisco, Sacramento, Miami, and Atlanta metropolitan areas through its personal communications services (PCS) licenses, and is in the process of expanding its operations

¹ For purposes of this Petition, the term “MetroPCS” refers to the parent company (MetroPCS Communications, Inc.) and all of its FCC-licensed subsidiaries.

² *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, 20 FCC Rcd 4685, 2005 FCC LEXIS 1390 (rel. March 13, 2005).

into other major metropolitan areas.³ MetroPCS offers interconnected commercial mobile radio services (“CMRS”) through unique rate plans which feature unlimited calling for a prepaid, flat monthly fee. These rate plans include a basic plan which features unlimited local calling and other rate plans which include both unlimited local calling and unlimited long distance in the continental United States. In addition to its unlimited rate plans, MetroPCS’ customers also may purchase other services on an *a la carte* basis.

MetroPCS’ service is a flexible, low-cost alternative to the national plans offered by many wireless carriers. The MetroPCS service also has enjoyed acceptance as an alternative to the wireline calling plans being developed and offered by the incumbent local exchange carriers (“ILECs”) and interexchange carriers (“IXCs”). Because of the scope of the company’s operations, MetroPCS originates traffic to and terminates traffic from numerous other local and interexchange telecommunications carriers throughout the country. Further, since a significant number of MetroPCS’ customers are utilizing the MetroPCS unlimited long distance calling plan, the access charges assessed by local exchange carriers have a significant impact on the costs of MetroPCS’ services. As a consequence, MetroPCS is a major participant in all aspects of the intercarrier compensation regime and MetroPCS’ interests are affected in a direct, tangible manner by the issues under consideration in the *FNPRM*. The ultimate resolution of these issues

³ The company has acquired spectrum rights in Detroit, MI and Dallas, TX. See FCC File Nos. 0001967542 and 50000CWAA05. The Company also is an interest holder in Royal Street Communications, LLC, which was the high bidder in Auction No. 58 for licenses in Los Angeles, CA and Orlando/Jackson, FL, among others. See FCC File No. 0002069525.

will have a significant impact on the types of interconnection used by MetroPCS as well as the types of services it may offer and the prices for such services. Moreover, because of the significant numbers of customers who use their MetroPCS service as their primary telecommunications service, MetroPCS offers a unique perspective on the issues raised by the *FNPRM*.⁴ Accordingly, MetroPCS has a cognizable interest in this proceeding and a substantial basis in experience for informed comment.

II. There is an Urgent Need for the Commission to Develop a Unified Intercarrier Compensation Regime

The *FNPRM* sets forth a persuasive case for the need for reform of the antiquated intercarrier compensation system that is now in place.⁵ MetroPCS resoundingly agrees with the Commission's conclusion that the complex and often inconsistent payment and cost methodologies that apply to access charges and reciprocal compensation end up imposing vastly different economic burdens on similar competing services. This makes the current regime difficult to maintain in the rapidly evolving telecommunications marketplace. Moreover, as the wireline telecommunications industry continues to consolidate,⁶ the traditional distinctions between local and interexchange services, borne of the break-up of AT&T, have continued to blur and different regimes built around these artificial classifications no longer make sense.

⁴ MetroPCS estimates that over 40% of its customers use MetroPCS services as their primary telecommunications service with a significant portion of that as their sole telecommunications service.

⁵ *FNPRM*, Section II.

⁶ The proposed acquisitions of AT&T, Sprint and MCI provide the latest examples of mergers that will further erase the historical distinctions between "local" and "long distance" companies.

Worst of all, the current regime creates an uneven playing field between all carriers and creates opportunities for arbitrage which serve to frustrate the development of efficient systems and cost-effective services that meet consumer needs. The other regulatory distinction that is at risk of being overtaken in a rapidly changing marketplace is the historical distinction between telecommunications and information services which often results in vastly different intercarrier compensation results. For example, Voice over Internet Protocol (“VoIP”) carriers do not pay access charges for terminating long distance calls while other telecommunications carriers, such as CMRS carriers, do pay access charges. This means that all carriers are not on an equal footing and some are unable to recoup all of their costs of providing services. Promulgating a unified intercarrier scheme will serve the public interest by eliminating artificial historical distinctions and eliminating inappropriate arbitrage opportunities.

As a consequence, MetroPCS wholeheartedly supports the Commission’s conclusion that the current intercarrier compensation regime cannot and should not be sustained in today’s ever-changing telecommunications marketplace. It is disappointing, however, that further progress has not been made to date in implementing a unified regime. Many of the findings made by the Commission with regard to the need for reform are hauntingly familiar to the findings made in April 2001 when the Commission released its initial *Notice of Proposed Rulemaking* in this proceeding (the “2001 NPRM”).⁷ MetroPCS appreciates the complexity and the sensitivity of the issues, and the

⁷ See *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Notice of Proposed Rulemaking*, 16 FCC Rcd. 9610 (2001).

difficulty of resolving them in a dynamic regulatory environment when powerful constituents often line up on opposite sides. There are, nonetheless, real public interest harms that have occurred as a result of the delay in bringing this proceeding to a conclusion.

Perhaps the most notable effect of the delay is that many carriers have become frozen in their interconnection tracks because the entire intercarrier compensation system is “in play”. Cost conscious carriers have been reluctant to devote substantial resources to the negotiation of creative, forward-looking intercarrier compensation arrangements when the effort could be rendered worthless by an FCC decision implementing a different comprehensive compensation regime.⁸ In the experience of MetroPCS, much of the progress that was made in the establishment of commercially reasonable interconnection arrangements through the negotiation, arbitration and approval of agreements pursuant to the procedures established in Sections 251 and 252 of the Communications Act of 1934, as amended (the “Act”),⁹ came to a halt after the Commission issued the *2001 NPRM*. Carriers naturally were loathe to devote substantial time to the negotiation of revised agreements that could be superseded by regulatory events. And, carriers were encouraged to remain in this holding pattern by periodic signals from the Commission

⁸ Indeed, as each decision of the Commission has resulted in interminable appeals, there is very little incentive to negotiate innovative solutions which will be subject to regulatory overhang.

⁹ 47 U.S.C. §§ 251, 252.

that the establishment of a unified intercarrier compensation regime remained a top priority of the Commission.¹⁰

The chilling effect that the *2001 NPRM* had on the establishment of creative interconnection arrangements not only affected the major players in the marketplace, but also affected the smaller carriers. Smaller communications companies tend more often to opt into agreements negotiated by others by invoking their rights under Section 252(i) of the Act. However, the opt-in opportunities become more limited when interconnection agreements remain in place beyond their initial negotiated terms, not because they reflect optimal arrangements in an evolving marketplace, but rather because carriers have elected to bide their time in anticipation of a revised and unified intercarrier compensation regime.

This problem has been exacerbated by the Commission's decision to eliminate pick-and-choose as an option under Section 252(i). As a result of that decision, smaller carriers, such as MetroPCS, essentially were left with two bad alternatives: either opt into an agreement that seldom fit their business or spend considerable resources to negotiate a new interconnection agreement from the ground up. The Commission must understand that pick-and-choose allowed smaller carriers to adopt all of the appropriate pieces of other negotiated interconnection agreements and only required them to negotiate those portions related to their special circumstances. The ILECs are now incented to make the smaller carriers start from the ILECs' standard form – which in many instances does not

¹⁰ In addition to halting innovative solutions, the regulatory gridlock has allowed the interconnection regime to freeze into the artificial historical distinctions which are no longer appropriate in today's dynamic telecommunications marketplace.

include the concessions made in prior interconnection negotiations. This results in significant wasted resources. Smaller carriers are forced to live either with contracts of adhesion imposed by the ILECs or to opt into stale and outmoded agreements that do not fit their business and stifle innovation in this importance segment of the telecommunications marketplace. If the Commission were to adopt a comprehensive intercarrier regime, smaller carriers would be able to use that regime as a starting place to negotiate those changes necessary due to the special circumstances faced by them.

MetroPCS' concern over the lack of resolution of this proceeding is heightened by the fact that there have been significant extraneous developments in the substantive law governing intercarrier compensation since the release of the *2001 NPRM*, which have exacerbated the inequities in the current regime. For example, in 2002, the Commission ruled that CMRS carriers were entitled to collect access charges from interexchange carriers only pursuant to a mutual agreement.¹¹ Since IXCs have absolutely no incentive to enter into voluntary agreements with CMRS carriers calling for the payment of terminating access by the IXC to the CMRS provider, the practical effect of this Commission ruling has been to deny CMRS carriers any terminating compensation from IXCs. The result is an inequitable situation in which CMRS carriers are frequently required to pay terminating access to others, but cannot receive terminating access

¹¹ *Petitions of Sprint PCS and AT&T Corp for Declaratory Ruling Regarding CMRS Access Charges*, WTO Docket No. 01-316, Declaratory Ruling, 17 FCC Rcd. 13192 (2002), *Aff'd in Part and Modified in Part*, *AT&T Corp. v. FCC*, 349 F.3d 692 (U.S. App. D.C. 2003). Moreover, since CMRS carriers are precluded from filing access tariffs, IXCs have no incentive to negotiate any agreement to avoid the CMRS carriers' access charges.

payments themselves.¹² This not only creates a disparity between the CMRS service provider and the IXC, but also makes it more difficult for CMRS carriers to compete on an equal footing with ILECs which receive terminating access payments from IXCs while CMRS carriers do not.¹³

Another inequity that has become more severe during the pendency of this proceeding has to do with the persistent efforts of ILECs and Competitive Local Exchange Carriers (“CLECs”) to utilize unilaterally filed state tariffs to collect excessive termination charges from CMRS carriers. Despite the Commission’s repeated recognition of the “terminating access monopoly problem,”¹⁴ the Commission nonetheless has permitted carriers to impose termination charges unilaterally by tariff in some instances. For example, in the recent *T-Mobile Order*¹⁵ the Commission upheld the right of ILECs to enforce tariffs filed prior to the effective date of the *T-Mobile Order* to collect termination charges from CMRS providers. This ruling created a significant competitive disparity since CMRS providers were themselves precluded from filing

¹² This has become especially true in the context of rural ILECs who terminate their traffic to CMRS carriers via IXC facilities, meaning that the CMRS carriers cannot charge access, while the rural ILEC insists that the CMRS carrier pay terminating access charges for traffic originated by CMRS customers and terminated on the rural ILEC system.

¹³ Since many CMRS carriers include long distance services in their rate plans, for which they must pay terminating access, the cost to provide services is substantially different for CMRS carriers and wireline carriers.

¹⁴ See *FNPRM* at para 24 and Note 68.

¹⁵ *In the Matter of Developing a Unified Intercarrier Compensation Regime; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket No. 01-92, 2005 FCC LEXIS 1215; 35 Comm. Reg. (PNF) 291, rel. February 24, 2005 (the “*T-Mobile Order*”).

tariffs at either the Federal or the state levels.¹⁶ Thus, CMRS carriers do not have the same compensation mechanism available to them for termination services as those provided to ILECs and CLECs.

Both of the above-cited examples serve to confirm the Commission's conclusion that there is a compelling need for "a new, unified intercarrier compensation regime that is better suited to a market characterized by competition among multiple types of carriers and technologies".¹⁷ Further, given the rapid convergence between the local and long distance markets and the wireless and wireline markets, the need for a unified scheme is more important than ever before. Accordingly, MetroPCS urges the Commission to address this situation by giving this proceeding its top priority and resolving these long-pending issues.

III. The ICF Proposal Should Become the Building Block for the Commission's Reform

Having concluded that there is an urgent need to reform the existing intercarrier compensation rules, the Commission proceeds to seek comment on a variety of industry proposals and statements of principle that have been formulated in the course of this proceeding.¹⁸ The Commission asks whether or not it should (a) adopt any one of these proposals *in toto*, (b) adopt a modified version of any particular proposal or (c) attempt to

¹⁶ See Petition for Limited Clarification or for Partial Reconsideration filed by MetroPCS Communications, Inc. on April 29, 2005, in CC Docket No. 01-92.

¹⁷ *FNPRM*, para. 17.

¹⁸ See *FNPRM*, para. 39.

combine different components from these various proposals. MetroPCS has reviewed the industry proposals carefully and has reached the following conclusions:

- None of the proposed plans is perfect. As a consequence, the Commission should not adopt a plan in its entirety simply because it appears to reflect the best of the offered alternatives. As would be expected, each plan tends to reflect the biases of its primary constituents, and as a consequence will not fully satisfy the Commission's objective of coming up with a technologically neutral plan that will promote economic efficiency on a level playing field. The Commission should adopt the plan that best fits the needs of the industry – namely one that acknowledges the convergence that is occurring and removes any impediment to that convergence. At this point, the Commission should pick the plan that lays the best foundation for the future and then refine that proposal to eliminate any undesirable aspects.
- At this stage, picking and choosing disparate elements from the various plans is problematic. While MetroPCS sees some plans as being more balanced and comprehensive than others, each was intended to propose an overall, unified approach to the compensation issues. Mixing and matching different components from these plans would carry with it a significant risk of upsetting the delicate balances and trade-offs that were made in an effort to construct an integrated comprehensive plan.

Based upon the foregoing conclusions, MetroPCS believes that the optimal approach is for the Commission to use as a foundation the single plan which it considers to be the

fairest and most comprehensive as a basis for the Commission's decision making, but to adjust the plan as required in order to reflect current circumstances and to insure fairness.

Having reviewed the proposed plans in some detail, MetroPCS believes that the ICF Plan lays the best foundation for a unified intercarrier compensation scheme.

Several considerations support this conclusion. First, the ICF Plan was developed by a diverse group of carriers that represent different segments of the telecommunications industry. This membership provides a measure of comfort that the various compromises which are necessary to arrive at a comprehensive plan have taken into consideration the diverse situations facing carriers in different sectors.¹⁹

Second, the ICF Plan is meritorious because it moves towards a bill-and-keep system. MetroPCS has reviewed the *Analysis of Pleadings in CC Docket No. 01-92 Prepared by the Staff of the Wireless Competition Bureau*²⁰ and believes that it provides strong support for the view that a bill-and-keep regime is superior to a calling party's network pays ("CPNP") regime as a unified solution. In particular, MetroPCS considers bill-and-keep to hold advantages over the CPNP alternatives because of its technological neutrality and ease of administration. In addition, bill-and-keep lays the best foundation for a long-lasting compensation plan because it removes many of the artificial classifications embodied in the current intercarrier compensation regime.²¹ MetroPCS is

¹⁹ *But cf* the discussion *infra* at p. 12 regarding possible adjustments required because of the under-representation of wireless interests in the ICF group.

²⁰ *FNPRM*, Appendix C.

²¹ As pointed out earlier, with rapid convergence of both local and long distance, telephony and information/data services, and wireless and wireline, the Commission must adopt an intercarrier

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a strong player in the convergence space and is certain that bill-and-keep will foster convergence because it will not penalize (or conversely reward) one segment of the industry over another. MetroPCS acknowledges, however, the benefit of implementing bill-and-keep pursuant to a well-defined transition plan so that the disruptions in the marketplace will be minimized. This is accomplished in the ICF Plan which moves towards bill-and-keep over a six year period.²²

A third and final attribute of the ICF Plan which causes it to merit serious consideration by the Commission is the comprehensive nature of the proposal. While one may not agree with all of the assumptions and resulting interim rates that are embedded in the ICF Plan, no one can seriously dispute that it is a significant and thoughtful proposal which seeks to address many of the most difficult issues presented by changes in the intercarrier compensation mechanism. For example, the attention paid to the unique circumstances of rural carriers and the challenges presented by the universal service requirements are to be commended.

Based on the foregoing, MetroPCS is convinced that the ICF Plan deserves to become the building block for the unified intercarrier compensation scheme. But, the plan is not perfect and requires some adjustments:

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compensation scheme which allows the artificial barriers inherent in the current intercarrier regime to be removed.

²² *But cf* the discussion *infra* at p. 14 regarding the need to accelerate the plan insofar as the wireless transition to bill-and-keep is concerned.

- Wireless carriers appear to be under-represented in the ICF group. As a result, the ICF Plan must be carefully reviewed to assure that it does not reflect an anti-CMRS bias. MetroPCS notes in this regard that one major independent wireless carrier, T-Mobile USA, Inc. (“T-Mobile”), which actively participated in the ICF discussions, decided not to become a signatory to the ICF Plan. In addition, on December 21, 2004, T-Mobile filed a letter raising certain questions about the fairness of the ICF Plan to CMRS carriers.²³ MetroPCS shares some of the concerns referenced in this T-Mobile letter, and urges the Commission to give careful consideration to them.
- MetroPCS considers the six year transition period in the ICF Plan to be an unnecessarily long transition period which allows more time than is necessary to permit carriers to properly plan for changes that are underway. MetroPCS notes that other major regulatory transitions - e.g., the movement of CLEC access charges to competitive rates and the movement away from UNE-P services - were effected in much shorter time frames.²⁴

²³ See Letter from Cheryl A. Tritt to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, dated December 21, 2004.

²⁴ The Commission has, in the past, imposed significant changes in telecommunications regulation that have incorporated transition periods of less than six years. See, e.g., *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand*, WC Docket No. 04-313, CC Docket No. 03-332, FCC 04-290 (rel. Feb. 4, 2005) (in which the Commission adopted a 12-to-18 month plan to transition competitive carriers from use of certain ILEC network elements such as mass market local switching); *Reform of Access Charges Imposed by Competitive Local Exchange Carriers, Seventh Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 96-262, FCC 01-146 (rel. April 27, 2001) (in which the Commission imposed a three-year transition period in which the tariffed access charge rates of CLECs would decrease from a maximum benchmarked rate to match the access charge rates of corresponding ILECs); and *In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on* (continued...)

- The ICF Plan may not adequately consider the prospect that different segments of the industry could be transitioned to bill-and-keep faster than others without creating market disruptions. Wireless services, while growing, continue to represent a relatively small percentage of the intercarrier compensation regime, and an earlier transition of wireless services to bill-and-keep would not cause any major disruptions in the marketplace. And, there are compelling competitive reasons to make this change. MetroPCS' data shows that a significant portion of MetroPCS' customers use MetroPCS' wireless service as their primary telecommunications service and the lion's share of customers are purchasing services which include local, long distance and information/data services. As VoIP becomes more widespread in the wireless space, MetroPCS believes that this convergence will accelerate. The convergence will occur in large measure before the six years have run on the current ICF Plan. Accordingly, MetroPCS urges the Commission to accelerate the ICF Plan as it applies to wireless-wireline and local and long-distance services. Since MetroPCS' services clearly show that these segments are converging now, waiting six years to drive the benefits will delay the benefits of convergence for MetroPCS' customers and harm the public interest.

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Universal Service, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, CC Docket Nos. 96-262, 94-1, 99-249, 96-45, FCC 00-193 (rel. May 31, 2000) (in which the Commission adopted the five-year CALLS plan for reforming the access charge regime).

The foregoing discussion indicates that there needs to be a critical analysis of some elements of the ICF Plan in order for adjustments to be made. The problem, as MetroPCS sees it, is that the Commission has done the ICF Plan a substantial disservice by lumping it in with multiple other plans for comment by interested parties. In the absence of an explicit indication by the Commission that it intends to utilize the ICF Plan as the basis of its reforms, commenting parties do not have the requisite incentive to dissect the ICF Plan and the proposed rates to the extent necessary to foster optimal results. MetroPCS recommends, therefore, that the Commission promptly issue a *First Report and Order* in this proceeding indicating that the ICF Plan will form the basis of the unified intercarrier compensation regime that the Commission is pursuing, and asking interested parties to focus all of their attention on the critical elements of that plan. While this may seem to add an additional procedural step to the proceeding, MetroPCS is confident that a preliminary decision of this nature will serve to focus the comments in the proceeding in a constructive and useful fashion, thereby permitting the Commission to reach an ultimate conclusion at an earlier time.

IV. The Significant Evolution of Wireless Services Must Be Taken Into Consideration

In the view of MetroPCS, the Commission's discussion in the *FNPRM* of the developing telecommunications marketplace does not give adequate attention to the significant tectonic shifts in the wireless industry which have occurred during the pendency of this proceeding. There are several core changes in the composition of the industry and the service offerings which have a fundamental impact on the intercarrier

compensation regime. MetroPCS asks the Commission to take note of these developments.

First and foremost is the extent to which wireless services are becoming a substitute for landline services. Several developments have fostered this change. Wireless system reliability has improved to the point where customers are comfortable using a wireless phone as their primary if not exclusive voice communications device. The improvement in network reliability has been accompanied by flexible pricing plans that move away from the imposition of per minute airtime charges that tend to discourage wireless phone use. Furthermore, consumer acceptance of wireless service plans that establish either a flat fee for unlimited service or a large “bucket” of wireless minutes encourages wireless customers to publish their wireless numbers which leads to an increase in the number of calls to their mobile units.²⁵

The MetroPCS business model provides an excellent case in point concerning the evolution of the wireless service industry. As earlier noted, MetroPCS provides a low cost service in which customers can place and receive an unlimited number of local calls for a flat monthly fee, and for a modest additional fee place an unlimited number of long distance calls in the continental United States. The MetroPCS service is directly competitive with the cost of traditional landline telephone service and also with the new

²⁵ Unlike the situation which existed in the earlier periods of the industry, the percentage of calls being terminated by wireless carriers has dramatically increased to the point where the balance between originating and terminating calls is approaching 50%. In addition, the minutes of use of wireless services have also increased dramatically. The average number of minutes of use for the major wireless carriers range from 500-900 minutes of use per month while some unlimited carriers, such as MetroPCS, easily double or triple the number of average minutes of use per month. This amount of usage is quickly
(continued...)

integrated local-long distance plans being offered by the major telecommunications carriers. As a consequence, MetroPCS marketing data reveals that many of its customers utilize this service as their sole or primary telephone. As such, MetroPCS represents a true landline substitute in the marketplace.

The evolution of the wireless business has largely resolved concerns over whether ingoing and outgoing traffic to and from CMRS providers is “roughly balanced”.²⁶ Uneven traffic flows used to be the primary argument against establishing a bill-and-keep regime which included wireless carriers. This trend towards even traffic flows will become more pronounced over time as subscribers become increasingly comfortable using their wireless telephones as their primary communications device. These developments argue in favor of adopting bill-and-keep as the ultimate objective and accelerating its implementation in the wireless arena.

Indeed, a flash-cut move to bill-and-keep for wireline-wireless intercarrier compensation should be seriously considered for several reasons.²⁷ First, although the amount of traffic being exchanged between wireless and wireline networks is not insignificant, it still is dwarfed by the amount of wireline-wireline interconnection traffic. Accordingly, shifting immediately to bill-and-keep for wireless-wireline traffic will not

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converging with the number of minutes of use of wireline services and with such convergence the traffic balance is quickly approaching 50%.

²⁶ Not surprisingly, MetroPCS’ call records show that the calling patterns of its subscribers are virtually indistinguishable from those of ILECs. The traditional pattern where wireless customers placed more calls than they received has disappeared. There is a true balance in the traffic that is originated and terminated.

²⁷ In the past, when the Commission has decided to implement significant changes it has generally done so over a shorter period than six years. *See supra* at Note 24.

have a deleterious overall effect on the telecommunications industry. Second, moving immediately to bill-and-keep for wireless-wireline traffic, however, will have a substantial procompetitive effect by promoting and supporting the convergence of wireless and wireline services. As mentioned above, wireless services are quickly supplanting wireline services and creating an environment that promotes such convergence will serve the public interest. Accordingly, any deleterious effects of immediate adoption of bill-and-keep for wireless-wireline interconnection will be outweighed by the procompetitive benefits of supporting convergence.

V. Detailed Default Network Interconnection Rules Will Be Beneficial

The *FNPRM* devotes considerable attention to the discussion of the “single POI per LATA” rule and poses a number of questions concerning the network interconnection rules that should be implemented as the Commission moves towards a unified intercarrier compensation scheme.²⁸ The Commission’s focus on these issues is totally appropriate. To the knowledge of MetroPCS, there are instances in which the inability of carriers to reach agreement on network configuration issues of this nature has resulted in interconnection agreements going to arbitration when, otherwise, a voluntary agreement would have ensued.²⁹

From the perspective of MetroPCS, it would be difficult to overstate the important role the single POI per LATA rule played in the successful development and evolution of

²⁸ *FNPRM*, Section II E.

²⁹ Indeed, in MetroPCS’ experience, the location of the POI and the charges related thereto are one of the largest sources of debate between carriers in negotiating interconnection agreements.

wireless systems. Because wireless systems are licensed on a broad geographic area basis, often an MTA basis, wireless service areas routinely cover multiple LEC LATAs and LEC local calling areas. Absent the existing requirement permitting a single POI per LATA, wireless carriers would have been subject to costly and burdensome interconnection requirements had they been required to interconnect in every local calling area or pay for transport to every POI located outside a local calling area. Indeed, MetroPCS submits that a rule requiring competitors to interconnect in every local calling area would have prevented the wireless industry from becoming the serious competitive force it now is. Consequently, the Commission must be particularly mindful of the potentially negative impact of changes it might adopt to the network interconnection requirements. Indeed, a shift away from a single POI per LATA would have a significant negative effect on the wireless industry which has designed its network around this important network design rule.

Conceptually, the approach to network interconnection set forth in the ICF Plan makes sense. Generally, this plan establishes default technical and financial rules that require an originating carrier to deliver traffic to the “Edge” of a terminating carrier’s network. And, in the view of MetroPCS, it makes sense to establish different interconnection rules for hierarchical, non-hierarchical and rural networks, as the ICF Plan proposes. Distinctions of this nature do not undermine the goal of establishing a unified regime. Rather, they recognize that different network architectures require different implementation plans in order for there to be a level playing field in which each

participant bears a reasonable portion of the network costs during the transition to a bill-and-keep regime.

The Commission asks whether the level of detail proposed by the ICF Plan is appropriate for inclusion in Federal rules, or whether it would be better for the Commission to establish more general requirements that leave the details to be negotiated between carriers.³⁰ MetroPCS urges the Commission to adopt network interconnection requirements that are as detailed as possible. Many prior disputes that arose in interconnection negotiations resulted from impasses related to these particular network interconnection issues. Any “general principles” adopted by the Commission in this area are likely to be subject to conflicting interpretations and to generate litigation. MetroPCS, which has established a successful business plan based upon its role as a low cost service provider, favors interconnection rules that will allow agreements to be reached with a minimum of cost and delay. This argues in favor of greater, rather than lesser, specificity. Further, with the demise of pick-and-choose interconnection rights under Section 252(i), the Commission should be mindful that any latitude in interconnection rules will result in requiring competitive carriers to spend significant resources litigating their interconnection rights.³¹

³⁰ *FNPRM* at para. 93.

³¹ Notwithstanding the significant strides being made by wireless carriers into the wireline monopoly, the ILECs still enjoy dominant power in that market and are incented to frustrate any effort of wireless carriers to reduce their costs. Accordingly, the Commission should adopt rules which obviate the need for significant interconnection rights to be litigated time and time again.

VI. The Provision of Transit Services is a Statutory Obligation

Assuming that the Commission adopts an intercarrier compensation scheme that obligates the originating carrier to deliver traffic to the edge of, or some other pre-determined point in, the terminating carrier's network, the ability of the originating carrier to secure transiting services on a reasonable cost-based rate basis from connecting carriers will be critical to the establishment of the "rapid, efficient, nationwide" network contemplated by Section 1 of the Act.³² Long-entrenched LECs would once again enjoy the ability to extract excessive fees from competitors if they were able to refuse to carry transiting traffic from originating carriers to terminating carriers that are interconnecting indirectly or are able to exact excessive rates. The Act specifically references indirect interconnection arrangements³³ and it would be fundamentally inconsistent with the Commission's statutory charge to allow the connecting carrier to refuse to facilitate such an indirect connection.³⁴

MetroPCS agrees with the legal analysis advanced by the CLECs and CMRS providers who argue that ILECs are required to transit services under the Act pursuant to Sections 251(a) and 251(c)(2)(B).³⁵ Notably, a finding by the Commission that carriers are obligated to provide transiting services to facilitate indirect connections would be

³² 47 U.S.C. § 151.

³³ 47 U.S.C. § 251(a)(1).

³⁴ Since transiting services are generally only available from the ILECs, the ILECs have a virtual monopoly and absent cost-based rates will be able to exact excessive rates.

³⁵ See *FNPRM*, para. 123 and Note 350.

entitled to deference by any reviewing court pursuant to the appellate review standard established in *Chevron USA, Inc. v. Natural Resources Defense Council, Inc.*³⁶ Based on these considerations, the Commission can and should find that it is essential to the interconnection scheme contemplated by the Act for carriers to provide transiting services upon reasonable request.

Additionally, transiting services must be provided utilizing a cost-based rate structure. It will be a hollow right indeed for an originating carrier to be entitled to secure transiting services from a connecting carrier if no limits are placed on the reasonableness of the charges to be imposed. Once the Commission rules that transiting services must be provided, the provisions of Section 201(b) of the Act³⁷ will require that all charges related to such service be “just and reasonable”.³⁸ In this context, the phrase “just and reasonable” should be interpreted to require the rates to be cost-based.

VII. The IntraMTA Rule for CMRS Interconnection Should Not Be Abandoned

The *FNPRM* contains an extended discussion of the intraMTA rule which provides that traffic to or from a CMRS network that originates and terminates within the same Major Trading Area (MTA) is deemed “local” and subject to reciprocal compensation obligations under Section 251(b)(5) rather than to interstate or intrastate

³⁶ 467 U.S. 837 (1984).

³⁷ 47 U.S.C. § 201(b).

³⁸ Moreover, since transiting services can properly be viewed as a network element necessary for indirect interconnection, the rates should be set at TELRIC in accordance with Section 252(d) of the Act.

access charges.³⁹ The intraMTA rule has played a major role in allowing fledgling wireless services to become a potent competitive force in the telecommunications marketplace. As a consequence, the Commission should view with a highly critical eye any proposal to abandon this element of the compensation regime.

Notably, the intraMTA rule has had a major influence on wireless system architecture. Abandoning the rule would have significant negative cost implications for wireless carriers who would likely find it necessary to reconfigure their entire networks if their local calling areas were radically redefined. Moreover, virtually every existing interconnection agreement between CMRS carriers and LECs would have to be scrapped if this fundamental premise of the arrangement was altered. Throughout the *FNPRM*, the Commission assures carriers that the adoption of revised interconnection rules is not intended to supplant voluntary agreements that are in place. These would, however, be hollow assurances were the Commission to abandon the intraMTA rule on a flash-cut basis and thereby render meaningless virtually all of the outstanding CMRS interconnection agreements.

Any move away from the intraMTA rule would also take the Commission down the wrong path. If the Commission eliminated the intraMTA rule, wireless carriers could become subject to access charges at the very time that the Commission is moving away from the access charge model in a unified intercarrier compensation regime. In addition, if the Commission decided to eliminate the intraMTA rule, it would need to revisit the

³⁹ *FNPRM*, § II H.

issue of access charges for wireless carriers and whether wireless carriers would be allowed to file access tariffs. Since the Commission currently precludes wireless carriers from tariffing access charges, such a change would be necessary or wireless carriers would become subject to access charges for traffic that is currently classified as local without a corresponding ability to charge access charges for the same traffic when originated by other carriers.⁴⁰ Further, even if the Commission allowed wireless carriers to promulgate access tariffs, subjecting wireless carriers to access charges would require significant development of billing systems to support access charges at a time when the Commission should be moving away from access charges. Under this scenario, wireless carriers would be faced with a Hobson's choice of either foregoing access and the substantial revenues associated with it or spending considerable amounts of money to develop billing systems, which development costs would be stranded investment as the Commission inevitably moved away from the outmoded access charges model.

VIII. The Default Arrangement Should Be Bill-and-Keep When Traffic Does Not Merit a Direct Interconnection

The Commission properly notes in the *FNPRM* that there are many circumstances in which the volume of traffic between originating and terminating carriers is not sufficiently great to warrant the establishment of a direct physical connection, or to justify the cost and expense that might be entailed in the negotiation of a voluntary

⁴⁰ MetroPCS does not advocate that the Commission allow wireless tariffs, and thinks that the better approach is to move to a bill-and-keep regime which is largely self-regulating without the need for Federal or state tariffs. However, if the Commission were to depart from the intraMTA rule, the Commission must allow wireless carriers to impose access charges via access tariffs just like other telecommunications carriers with whom they compete.

interconnection agreement.⁴¹ One possible alternative that is explored in the *FNPRM* is whether the Commission should establish national terms and rates for LEC-CMRS indirect interconnection in situations where traffic volume between the two carriers is *de minimis*.

MetroPCS opposes the establishment of a national default rate (other than bill-and-keep) for indirect interconnection arrangements for several reasons. First, it will be difficult to establish a meaningful uniform standard as to what constitutes “*de minimis*” traffic given the variety of circumstances in which carriers who otherwise are connecting indirectly find themselves. Second, establishing a default rate does not serve to answer all of the many implementation issues which frequently arise when parties are negotiating indirect interconnection arrangements. Foremost among these is the question of the manner in which traffic exchanged indirectly between parties will be identified and measured. Frequently, traffic exchanged pursuant to an indirect interconnection method is intermixed with other traffic transmitted to the terminating carrier by the connecting carrier. It is not always the case that the originating and terminating carriers have in place the requisite data collection systems to enable them to separately identify and account for the traffic. It is for this reason that many indirect interconnection arrangements are based upon general assumptions regarding the relative traffic flows between the carriers rather than upon actual call records. Obviously, different

⁴¹ *FNPRM* at para. 149.

circumstances of this nature cannot be adequately accounted for in a general Commission rule that establishes a national default rate.

In the view of MetroPCS, the correct solution is for the Commission to rule that indirect interconnection arrangements shall be deemed to be on a bill-and-keep basis in the absence of a voluntary agreement to the contrary.⁴² This approach establishes a self-regulating mechanism in which carriers will use their own judgment to ascertain whether the traffic between two systems is sufficiently great to warrant the establishment of a voluntary reciprocal compensation agreement. Consequently, the Commission need not be concerned that a default bill-and-keep regime will preclude carriers from entering into negotiations of voluntary agreements. Under the Commission's rules, every telecommunications carrier has a general duty to interconnect, directly or indirectly, with any other requesting telecommunication carrier.⁴³ All common carriers also have a duty to furnish communications services upon reasonable request and to implement just and reasonable charges, practices and classifications with regard to such services.⁴⁴ Given these obligations, a carrier who refuses to negotiate in good faith to establish a reasonable reciprocal compensation arrangement with a requesting carrier would be subject to a complaint under Section 208 of the Act. As a consequence, the Commission need not be concerned that a requesting carrier would be without recourse if another carrier

⁴² Indeed, this is the rule that the Commission adopted in the context of LEC-CMRS interconnection in the *T-Mobile Order*.

⁴³ 47 U.S.C. § 251(a)(1).

⁴⁴ 47 U.S.C. §§ 201(a) and 202.

unreasonably refused to substitute a reciprocal compensation agreement for the default bill-and-keep agreement discussed above.

Moreover, implementing a national default rate could require wireless carriers to face the same Hobson's choice as a move away from the intraMTA rule would impose - the wireless carriers could be forced either to spend money to develop billing systems to bill for this traffic at a time when the Commission should be moving away from such a mechanism⁴⁵ or forgo revenue when its costs are increasing. The better approach is to make the default rule bill-and-keep which would not require any billing changes and will maintain the competitive playing field level between wireline and wireless carriers.

Conclusion

The foregoing premises having been duly considered, MetroPCS respectfully requests that the Commission move promptly to establish a unified intercarrier compensation regime which conforms to the principles enunciated in these comments.

⁴⁵ Wireline carriers will not face a similar Hobson's choice as they already have billing systems capable of billing for such traffic and the Commission should expect them to immediately begin charging for such traffic if a national default rate were adopted.

Respectfully submitted,

MetroPCS Communications, Inc.

By: /s/ Carl W. Northrop
Carl W. Northrop

PAUL, HASTINGS, JANOFSKY & WALKER LLP
875 15th Street, NW
Washington, D.C. 20005
Telephone: (202) 551-1700
Facsimile: (202) 551-1705

Mark A. Stachiw
V.P., General Counsel and
Secretary
MetroPCS Communications, Inc.
8144 Walnut Hill Lane, Suite 800
Dallas, Texas 75231
Telephone: (214) 265-2550
Facsimile: (972) 860-2682

Its Attorneys

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